

Docket No. 1,018,725 is a claim against Wesley for the April 8, 2004 incident.

On October 26, 2004, the parties from both claims appeared before Judge Bogart at a preliminary hearing that addressed both claims. At that hearing, claimant argued her pelvis fracture in April 2004 occurred as a natural and probable consequence of her March 2000 accident. Claimant also argued, in the alternative, that she sustained a new and separate accident on April 8, 2004. Moreover, claimant argued there were injuries from the March 2000 accident that were not affected by the April 2004 pelvis fracture and, therefore, Barrett and American were not justified in terminating her ongoing medical treatment for those other problems.

Judge Bogart determined claimant's injuries arose from the March 29, 2000 accident and, therefore, the Judge ordered claimant's medical benefits to be paid by Barrett and American in Docket No. 1,001,014. Accordingly, the Judge denied claimant's request for benefits in the claim against Wesley in Docket No. 1,018,725. The Judge issued separate preliminary hearing Orders, both of which were dated October 27, 2004.

The Order that was entered in Docket No. 1,001,014 reads, in part:

All treatment granted for accidental injury arising under the claim 1,001,014.
The present doctor is to be continued as the authorized treating physician for all treatment.

Barrett and American contend Judge Bogart erred. They argue claimant sustained a new, compensable accident working for Wesley on April 8, 2004, which injured claimant's pelvis and left knee. Consequently, Barrett and American argue they should not be responsible for any medical treatment related to claimant's pelvis or left knee. Accordingly, Barrett and American request the Board to set aside the preliminary hearing Order entered against them.

Wesley, on the other hand, argues claimant's pelvis fracture was a direct and natural consequence of her March 2000 motor vehicle accident and, therefore, the preliminary hearing Orders should be affirmed. Wesley also argues the April 2004 incident is not compensable against it as the fracture occurred when claimant stood and turned, which is an activity of daily living. In any event, Wesley also contends the April 2004 incident did not affect or injure claimant's left knee. Consequently, Wesley requests the Board to affirm both October 27, 2004 preliminary hearing Orders.

Claimant likewise contends both October 27, 2004 preliminary hearing Orders should be affirmed. In the alternative, claimant asks the Board to grant claimant medical benefits against Wesley in Docket No. 1,018,725.

The only issue before the Board in these appeals is whether claimant sustained an intervening injury in April 2004 that would terminate Barrett and American's obligation to provide claimant with medical treatment arising from the March 29, 2000 car accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes the October 27, 2004 preliminary hearing Orders should be affirmed.

On March 29, 2000, claimant was seriously injured in an automobile accident while working for Barrett. As a result of that accident, claimant sustained a brain injury, crushed knuckle, broken collarbone, broken ribs, bruised lungs, broken femur, broken ulna, and two compressed fractures in her thoracic spine. Part of claimant's medical treatment included placing a rod in claimant's left leg from her knee to her hip. That rod was later removed.

Claimant recovered from the March 2000 accident to the extent she was able to return to work as an admissions clerk for another employer, Wesley. Claimant believes she commenced that job in August 2001.

Barrett and American were providing claimant with ongoing medical treatment for her March 2000 injuries until learning claimant was diagnosed with a fractured pelvis. According to claimant, while at work on April 8, 2004, she experienced pain in her pelvis as she stood and turned. Claimant described the incident as follows:

Well, I was in my office and I do all of the admitting paperwork, I had stood up, I was in the process of admitting a patient and I stood up and I did a pivot turn on my left leg and it was, like, oh God, I thought that I just stepped wrong. Anyhow, well, then I continued to walk on it for three or four days. And what we are is a rehab hospital and so finally I had kept -- the mornings I would be okay, but then as the day went on I kept getting worse and worse¹

Claimant specifically denies injuring or aggravating her left knee in the April 2004 incident. Although claimant's left knee symptoms increased following the incident, claimant attributes that worsening to an injection that wore off, which she had received before the incident at Wesley. Contrary to any medical notes, claimant insists she did not twist her left knee in the April 2004 incident.

One of claimant's treating physicians, Dr. Bruce R. Buhr, wrote claimant's attorney on August 2, 2004. The doctor related claimant's pelvis injury to the March 2000 accident. The doctor wrote, in part:

¹ P.H. Trans. (Oct. 26, 2004) at 21.

I do believe that there is a connection between her [claimant's] recent pelvic injury and her previous motor vehicle accident of March 29, 2000. At that time, Ms. Heronemus sustained a left femur fracture, which has resulted in deterioration of her bone stalk in her pelvis and left lower extremity. It has also resulted in stiffness around her left hip, which would add additional stress to her pelvis when moving and changing positions. I believe that the two injuries are related in this fashion.²

Moreover, claimant testified (without any party objecting) that Dr. Buhr had explained how the pelvis injury was related to the March 2000 car accident. Claimant testified:

[Dr. Buhr] said that because all the muscles connect right to that pelvis and that those muscles are real tight from my car accident and that the bone is weakened because of the car accident from the IM rod being in there and that, with the bone weakened and the muscles tight, that when I did the pivot step, the muscles jerked to pull me back on center and that, because of the bone being weak, it popped the bone.³

The Board concludes the record fails to establish that claimant sustained an intervening accident that would terminate Barrett and American's obligation to provide claimant with medical benefits. The Board affirms the Judge's finding that Barrett and American are responsible for claimant's medical benefits and ongoing medical treatment. Likewise, the Board affirms the Judge's finding that Wesley is not responsible for claimant's medical treatment.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but may be modified upon a full hearing on the claim.⁴

WHEREFORE, the Board affirms both October 27, 2004 preliminary hearing Orders entered by Judge Bogart.

IT IS SO ORDERED.

² *Id.*, Cl. Ex. 1.

³ P.H. Trans. (Oct. 26, 2004) at 33.

⁴ K.S.A. 44-534a(a)(2).

Dated this ____ day of December 2004.

BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant
Clifford K. Stubbs, Attorney for Barrett and American
Vincent A. Burnett, Attorney for Wesley
Vincent L. Bogart , Special Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director